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any activity described in this paragraph (a) without the prior approval of this Board pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of “1” or “2” thereafter, in its most recent examination, and is not in a troubled condition as defined in § 238.72, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both § 238.53 and this section, the procedures of § 238.53 shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the appropriate Reserve Bank on the designated form. The Board must act upon such application according to the procedures of § 238.53(d), (e), and (f).

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

Subpart G—Financial Holding Company Activities

§ 238.61 Scope.

Section 10(c)(2)(H) of the HOLA (12 U.S.C. 1467a(c)(2)(H)) permits a savings and loan holding company to engage in activities that are permissible for a financial holding company if the savings

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and holding company meets the criteria to qualify as a financial holding company and complies with all of the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act as if the savings and loan holding company was a bank holding company. This subpart provides the requirements and restrictions for a savings and holding company to be treated as a financial holding company for the purpose of engaging in financial holding company activities. This subpart does not apply to savings and loan holding companies described in section 10(c)(9)(C) of the HOLA (12 U.S.C. 1467a(c)(9)(C)).

§ 238.62 Definitions.

For the purposes of this subpart:

(a) *Financial holding company activities* refers to activities permissible under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and § 225.86 of this chapter.

(b) [Reserved]

§ 238.63 Requirements to engage in financial holding company activities.

(a) *In general.* In order for a savings and loan holding company to engage in financial holding company activities:

(1) The savings and loan holding company and all depository institutions controlled by the savings and loan holding company must be and remain well capitalized;

(2) The savings and loan holding company and all depository institutions controlled by the savings and loan company must be and remain well managed; and

(3) The savings and loan holding company must have made an effective election to be treated as a financial holding company.

§ 238.64 Election required.

(a) *In general.* Except as provided below, a savings and loan holding company that wishes to engage in financial holding company activities must have an effective election to be treated as a financial holding company.

(b) *Activities performed under separate HOLA authority.* A savings and loan holding company that conducts only the following activities is not required

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to elect to be treated as a financial holding company:

(1) *BHC Act section 4(c)(8) activities.* Activities permissible under section 10(c)(2)(F)(i) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(i)).

(2) *Insurance agency or escrow business activities.* Activities permissible under section 10(c)(2)(B) of the HOLA (12 U.S.C. 1467a(c)(2)(B)).

(3) *“1987 List” activities.* Activities permissible under section 10(c)(2)(F)(ii) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(ii)).

(c) *Existing requirements apply.* A savings and loan holding company that has not made an effective election to be treated as a financial holding company and that conducts the activities described in paragraphs (b)(1) through (3) of this section remains subject to any rules and requirements applicable to the conduct of such activities.

§ 238.65 Election procedures.

(a) *Filing requirement.* A savings and loan holding company may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank. A declaration by a savings and loan holding company is considered to be filed on the date that all information required by paragraph (b) of this section is received by the appropriate Reserve Bank.

(b) *Contents of declaration.* To be deemed complete, a declaration must:

(1) State that the savings and loan holding company elects to be treated as a financial holding company in order to engage in financial holding company activities;

(2) Provide the name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

(3) Certify that the savings and loan holding company and each depository institution controlled by the savings and loan holding company is well capitalized as of the date the savings and loan holding company submits its declaration;

(4) Certify that the savings and loan holding company and each savings association controlled by the savings and loan holding company is well managed

as of the date the savings and loan holding company submits its declaration;

(c) *Effectiveness of election.* An election by a savings and loan holding company to be treated as a financial holding company shall not be effective if, during the period provided in paragraph (d) of this section, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank:

(1) Any insured depository institution controlled by the savings and loan holding company (except an institution excluded under paragraph (d) of this section) has not achieved at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the savings association’s most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *Consideration of the CRA performance of a recently acquired savings association.* Except as provided in paragraph (f) of this section, a savings association will be excluded for purposes of the review of the Community Reinvestment Act rating provisions of paragraph (c)(1) of this section if:

(1) The savings and loan holding company acquired the savings association during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The savings and loan holding company has submitted an affirmative plan to the appropriate Federal banking agency for the savings association to take actions necessary for the institution to achieve at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the next examination of the savings association; and

(3) The appropriate Federal banking agency for the savings association has accepted the plan described in paragraph (d)(2) of this section.

(e) *Effective date of election.*

(1) *In general.* An election filed by a savings and loan holding company under paragraph (a) of this section is effective on the 31st calendar day after